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EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW

Case Law Bulletin  
Week of December 18, 2017

First Circuit

[Gitau v. Sessions](#), No. 17-1280, 2017 WL 6546203 (1st Cir. Dec. 22, 2017) (Waiver-216(c)(4))

The First Circuit denied the PFR, concluding that the Board did not err in denying petitioner a waiver based on a good faith marriage pursuant to section 216(c)(4)(B) or (C) of the Act and that substantial evidence supported the Board's determination that petitioner would not suffer extreme hardship were she to be removed from the United States and thus was ineligible for a waiver under section 216(c)(4)(A) of the Act. The court noted that the agency determined that much of the evidence concerning conditions in Kenya did not relate to the relevant period and there was no evidence that petitioner would be unable to find employment in Kenya.

Eighth Circuit

[Onduso v. Sessions](#), No. 16-2164, No. 17-1526, 2017 WL 6505332 (8th Cir. Dec. 20, 2017) (COV)

The Eighth Circuit denied the PFR, concluding that petitioner's 2004 conviction in violation of Minn. Stat. § 608.2242, subd. 1 (misdemeanor domestic assault) categorically qualifies as a crime of violence under 18 U.S.C. § 16(a). The court agreed with the Board that the then-applicable Eighth Circuit and Minnesota precedent suggested that both subsections satisfy section 16(a). The court held that whichever provision served as the basis for petitioner's conviction, it finds that it necessarily involved a crime of violence and thereby qualifies as a crime of domestic violence under section 237(a)(2)(E)(i) of the Act.

[Baltti v. Sessions](#), No. 16-1037, 2017 WL 6460505 (8th Cir. Dec. 19, 2017) (Asylum-PSG; Political opinion)

The Eighth Circuit denied the PFR, concluding that substantial evidence supported the Board's determination that there was no nexus between any possible persecution of petitioner and his political opinion or any other statutorily protected ground, and that petitioner's fear of future persecution was not objectively reasonable. Regarding lack of nexus, the court noted the Board's finding that petitioner's detention in a military camp occurred prior to him speaking out against the Ethiopian government, and therefore, it could not have been the cause of his detention.

Ninth Circuit

[Urcino v. Sessions](#), Nos. 13-70378, 14-73760, 2017 WL 6525299 (9th Cir. Dec. 21, 2017) (unpublished) (Motion for continuance)

The Ninth Circuit granted the PFR and remanded to the Board, concluding that the IJ abused her discretion in denying petitioner's motion for a continuance because, "at the time of the denial, the IJ knew that the conviction underlying [petitioner's] section 212(a)(2)(A)(i)(II) and section 212(a)(2)(C) grounds for removal was infirm, and that [petitioner's] criminal attorneys were working with the state trial court to have the conviction vacated even before the IJ issued a written decision." The court also concluded that the IJ should not have discounted the request for more time merely because petitioner had already requested multiple continuances to obtain a lawyer and to communicate with counsel during his detention, as petitioner's request for additional time was not indefinite.